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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,967	07/21/2003	Ioana M. Rizoiu	BI9001DIV2CON	6283

7590 08/22/2006

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/624,967	RIZOIU ET AL.	
	Examiner	Art Unit	
	david shay	3735	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED August 7, 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 69-94.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330

Continuation of 5. Applicant's reply has overcome the following rejection(s): 112 first paragraph rejections of the use of two nozzles, and all double patenting rejections.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant has argued that the reference to interchangeable nozzles indicates the simultaneous use of plural nozzles, this argument is not convincing, however, the reference to the second nozzle (and the associated element 72 in Figure 5) is demonstrative of the use of two nozzles, thus the drawing objection related to the showing of two nozzles is withdrawn. The arguments drawn to the remainder of the drawing objections are not convincing. Those arguments based on the interpretation of prior art drawings are not the operative considerations when determining compliance with rule 1.83. The mere fact that one having ordinary skill might imagine the missing elements in the drawings or would understand how they would be illustrated, had applicant done so does not relieve applicant of the responsibility of complying with rule 1.83. It is noted that the illustration of Figure 5 in the originally filed disclosure shows no atomized fluid particles from the nozzles, thus the angles, combining, simultaneous output, and the interaction zone are similarly not shown. With regard to applicant's assertion that the art rejections involving Rizoju et al ('256) are improper as Rizoju et al ('256) is not prior art, these arguments are not convincing. Applicant's attention is respectfully invited to the first paragraph of the originally filed disclosure, which contains no specific reference to the earlier filed application, as required by 35 U.S.C. 120. Applicant's attention is further respectfully invited to the Declaration filed with the contemporaneously with the instant application, which clearly states, under the section claiming the benefit of United States applications "NONE". Thus it is unclear on what basis applicant is asserting that Rizoju et al ('256) is not prior art with respect to the instant application.

Continuation of 13. Other: the originally filed drawings (December 5, 1997) do not contain an element 75 nor a figure 5b as illustrated in the proposed drawing change. Thus this drawing change is not approved as containing new matter.